

On April 6, 2005, Barry Rohweder and Gary Rohweder challenged the accuracy of data in this Recommendation. Their challenge is appended to this Recommendation. All of the factual findings in this Recommendation were based upon the Stipulation entered between the Department of Commerce and the Licensee. The Office of Administrative Hearings has determined that the Recommendation accurately reflects the contents of the Stipulation.

Neither of the challengers were parties to the proceeding nor did either of them participate in the drafting of the Stipulation. To ensure that this record is complete, each challenged finding is identified for reference to the substance of the challenge.

-----  
6-1005-8450-2

STATE OF MINNESOTA  
OFFICE OF ADMINISTRATIVE HEARINGS  
FOR THE MINNESOTA DEPARTMENT OF COMMERCE

In the Matter of the Residential Building Contractor's License of Beacon Builders, Inc., a Minnesota Corporation, License No. 6502

FINDINGS OF FACT,  
CONCLUSIONS, AND  
RECOMMENDATION

The above-entitled matter came on for hearing before Allan W. Klein, Administrative Law Judge, on April 27, 1994, in St. Paul. The hearing continued on April 28 and 29, and concluded on May 11.

Appearing on behalf of the Department of Commerce was Assistant Attorney General Susan E. Damon, 1200 NCL Tower, 445 Minnesota Street, St. Paul, Minnesota 55101-2130.

Appearing on behalf of Respondent Beacon Builders, Inc. was Thomas R. Olson, Attorney at Law, 26 East Exchange Street, #220, St. Paul, Minnesota 55101. After the hearing, but before the filing of briefs, Mr. Olson withdrew as counsel to Beacon Builders, and Beacon filed briefs through its president, Francis R. Hughes, 905 Jefferson Avenue, St. Paul, Minnesota 55102.

The record in this matter closed on August 31, 1994.

This Report is a recommendation, not a final decision. The Commissioner of Commerce will make the final decision after a review of the record which may adopt, reject or modify the Findings of Fact, Conclusions, and Recommendations contained herein. Pursuant to Minn. Stat. § 14.61, the final decision of the Commissioner shall not be made until this Report has been made available to the parties to the proceeding for at least ten days. An opportunity must be afforded to each party adversely affected by this Report to file exceptions and present argument to the Commissioner. Parties should contact James E. Ulland, Commissioner, Department of Commerce, 133 East Seventh Street, St. Paul, Minnesota 55101, telephone (612) 296-6694, to ascertain the procedure for filing exceptions or presenting argument.

#### STATEMENT OF ISSUE

Should the Department retroactively revoke the residential building contractor's license of Beacon Builders, Inc. or otherwise discipline it?

Based upon all of the proceedings herein, the Administrative Law Judge makes the following:

#### FINDINGS OF FACT

##### Background of Beacon Builders and Frank Hughes

1. Francis R. ("Frank") Hughes is approximately 58 years old. He resides in St. Paul, Minnesota. He graduated from college in 1958, and has been in and out of the construction business since 1950. He has been involved in the construction of new homes, the conversion of apartments to condominiums, and, most recently, in the fire damage repair business. Tr. pp. 56-63 and S. p. 1 (Transcript and Stipulation, respectively).

2. Frank R. Hughes began conducting business under the name "Beacon Builders, Inc." in about June of 1990. Beacon Builders, Inc. was not incorporated until March 25, 1992. Beacon Builders, Inc. is a construction business specializing in fire damage repair. S. 1.

3. At all times from the start of business in 1990 up to the current date, the controlling force and sole decision-maker with regard to the activities of Beacon Builders, Inc. was Frank R. Hughes. He held the office of president from March 25, 1992 to May 7, 1992. On May 7, 1992, his son, Daniel J. Hughes, was appointed to that office. Daniel J. Hughes nominally held the office for less than one month, until June 5, 1992. On that

date, Frank R. Hughes resumed his post as president. However, Daniel Hughes served only as a figure-head president, and was appointed without any fore-knowledge or consent. As will be detailed more fully below, Daniel Hughes performed no services for the corporation other than to sign a few documents. Frank R. Hughes actively controlled the corporation throughout the time that Daniel R. Hughes was the president. Ex. 1, 4, 33 & 39, p. 2; Tr. 124-25, 235-36, Ex. 32 & 33; Tr. 224, 254-55 & 277; S. 1.

4. Bernadette J. Hughes, who is the wife of Frank R. Hughes, is currently and has continuously, since March 25, 1992, been the director, secretary and vice-president of Beacon Builders, Inc. S. 2.

5. Gary Lee Rohweder was a vice-president of Beacon Builders, Inc. from April 1, 1992 through September 30, 1992. S. 2. Barry Lee Rohweder, his son, also served as a vice-president for the same time period. Id. **[The accuracy of this finding is challenged as reflected in the appended April 6, 2005 letter].**

6. The Hughes Family Irrevocable Trust is currently, and has been at all times relevant hereto, the sole shareholder of Respondent corporation. Bernadette J. Hughes is the sole trustee of the trust. S. 2.

Pre-Application Administrative Actions, Criminal Convictions, Lawsuits, or Civil Judgments

7. As of May 11, 1992, when Respondent's application for licensure as a residential building contractor was submitted, Respondent had been named as a defendant in a contract action entitled St. Paul Division of Northwest Publications, a Delaware corp. d/b/a St. Paul Pioneer Press v. Gene Jackson, a/k/a Frank Hughes, individually and d/b/a Beacon Builders, Inc., Ramsey County District Court, File No. 62-C5-90-13615. A \$262.00 judgment was entered against the defendants in this matter on December 3, 1990. Per stipulation of the parties, the judgment was vacated on December 23, 1991 after payment of an agreed-upon amount by Frank R. Hughes to the plaintiff.

8. As of May 11, 1992, Frank R. Hughes had also been named as a defendant and had also had judgments entered against him in at least the following lawsuits:

(1)

Federal Deposit Insurance Corp. v. Hughes Development, Co., Francis R. Hughes, and Bernadette J. Hughes, 684 F.

Supp. 616 (D. Minn. 1988) and Federal Deposit Insurance Corp. v. Hughes Development, Co., Francis R. Hughes, and Bernadette J. Hughes, 938 F.2d 889 (8th Cir. 1991). Judgments of approximately \$300,000 and \$100,000 were entered against the defendants in these matters and remain unsatisfied. Tr. 128-29, 142-43, and S. 5. Frank Hughes has made no payments on these judgments. Tr. 143.

(2)

John Alberg v. Hughes Development Company, Inc., and its President, Francis R. Hughes and Francis R. Hughes, Individually, Ramsey County District Court, File No. C9-87-491817. The Complaint in this matter included, inter alia, claims of conversion and fraud. A \$10,269.09 judgment against defendants was entered on February 9, 1989. The judgment was not satisfied as of the time Respondent's application for state licensure was submitted, and remains unsatisfied. S. 5. No payments have been made on this judgment. Tr. 143.

(3)

Title Services, Inc. v. Holiday Homes, Inc., and Francis R. Hughes, Individually, Ramsey County District Court, File No. C4-88-239. A \$24,865.44 judgment against defendants in this contract action was entered on March 7, 1990. The judgment was not satisfied as of May 11, 1992, and remains unsatisfied. No payments have been made on this judgment. S. 5-6 and Tr. 143.

(4)

Fireside Corner, Inc. v. Holiday Homes and Frank N. [sic] Hughes, Ramsey County Conciliation Court, Case No. SX 903811. A \$589.37 judgment was entered against the defendants in this contract action on August 31, 1990. The judgment was not satisfied as of the time of Respondent's application for state licensure and remains unsatisfied. Frank R. Hughes has made no payments on this judgment. S. 6 and Tr. 143.

(5)

Diane G. Guon v. Frank Hughes, Ramsey County Conciliation Court, Case No. S 1908458, and Ramsey County District Court, File No. C6912441. A \$218.28 judgment was entered against Frank Hughes in this matter on February 1, 1991. The judgment was not satisfied as of May 11, 1992, and remains unsatisfied. Frank R. Hughes has made no payments on this judgment. Tr. 144.

9. As of May 11, 1992, Bernadette J. Hughes, who was a director, secretary and vice-president of Beacon Builders, Inc., had been named as a defendant in the Federal Deposit Insurance Corp. matters referenced above. S. 7 and T. 142-43.

10. Prior to the submission of the application, Gary Rohweder and/or Barry Rohweder had judgments entered against them, which had not been satisfied, in the lawsuits noted in paragraphs 39-47 of the stipulation. In addition, Gary Rohweder was convicted of misdemeanor theft, in violation of Minn. Stat. § 514.02, subd. 1, on September 12, 1991 in Hennepin County District Court. Gary Rohweder was also convicted of misdemeanor theft, in violation of Minn. Stat. § 609.52, subd. 2(1) on September 9, 1988 in Hennepin County District Court. S. 9-10. **[The accuracy of this finding is challenged as reflected in the appended April 6, 2005 letter].**

11. Barry Rohweder was convicted of misdemeanor theft by check, in violation of Minn. Stat. § 609.535, subd. 2(a) on March 28, 1991 in Hennepin County District Court. **[The accuracy of this finding is challenged as reflected in the appended April 6, 2005 letter].**

12. In 1989, Frank R. Hughes was the subject of an investigation by the Department based on allegations that he violated the provisions of Minn. Stat. § 82.24, subd. 1 (1988) by accepting money with respect to a real estate transaction without depositing the money in a trust account. A Cease and Desist Order was issued on April 18, 1989. However, after submission of the matter to an Administrative Law Judge, the Cease and Desist Order was vacated, based on a determination that Hughes and his company were not subject to real estate trust account requirements because they did not meet the definition of a "real estate broker". S. 10 and Ex. 107.

#### State License Application

13. In 1991, the Legislature first adopted state licensing requirements for residential building contractors. The bill, Laws of Minnesota 1991, ch. 306, was not enacted until June of 1991, and the residential building contractor's licensure provisions were set to take effect January 1, 1992. Prior to that time, there had been only municipal licensing of residential building contractors, but no state licensing.

14. The Department prepared an application form, and also prepared a detailed instruction sheet that explained how to fill out the form. In late 1991 and early 1992, the Department mailed the forms directly to contractors, and also distributed them to building supply centers and municipalities. The City of

Minneapolis supplied the Department with a mailing list of all contractors which had been licensed in the city during 1991. The Department mailed its instruction sheet along with the application form. Tr. 413, 428-32, Exs. 60 (application form) and 31 (instructions). Tr. 496-97. Hughes did receive the instruction sheet as well as the application form at some time prior to May of 1992. See, Finding 16, below.

15. A corporate applicant for a residential building contractor's license was required to submit a completed application form, along with a copy of the corporation's Articles of Incorporation, specific information on insurance coverage, and proof of bonding. Corporations were also required to provide a list identifying the name and address of "each corporate officer, director and all shareholders holding more than five percent of the outstanding stock of the corporation". Ex. 60. In addition, part of the form (page two, "Additional Required Information"), requires an applicant to disclose the following:

Have you, any of the owners, partners, officers, directors or any shareholder owning more than five percent of the outstanding stock of the corporation or the "qualifying person" ever: \* \* \*

- B. been the subject of any inquiry or investigation by any division of the Minnesota Commerce Department?
- C. had any occupational license or permit censured, suspended, revoked, cancelled, terminated or been the subject of any type of administrative action?
- D. been convicted or are currently charged with any criminal offense (felony, gross misdemeanor or misdemeanor), other than traffic violations, in any state or federal court within the last ten (10) years?
- E. been a defendant in any lawsuit or been named in a civil judgment, involving claims of fraud, misrepresentation, conversion, mismanagement of funds, breach of fiduciary duty or breach of contract?

\* \* \*

- H. ever filed for bankruptcy or protection from creditors or currently have outstanding unsatisfied judgment(s)?

16. After Hughes received the application form and instruction sheet, sometime prior to May of 1992, he realized

that he, as an officer of Beacon Builders, Inc., would have to answer "yes" to a number of the background questions listed above. Tr. 127, 129, 200-05, 587, 678-80. He was concerned about having to answer the questions affirmatively, as the construction business was the only business which he knew. Tr. 129, 132.

17. Hughes made an anonymous call to the Department of Commerce, and spoke with an investigator named Paul Jansen, who was, at the time, handling residential building contractor matters for the Department's enforcement division. Tr. 199-210 and 436-41. Without identifying himself by name, Hughes asked what would happen if an application were submitted that contained "yes" answers to the background questions. Jansen replied that there would not be a problem if just one question were answered affirmatively, but that if two or more questions were answered affirmatively, the application would be set aside by the initial reviewer and a time-consuming investigation would follow. Tr. 200, 203 and 129.

18. Since Hughes was in business, and desired to continue to be in business without any interruptions, he did not think it would be a good idea for his name to appear on the application, or for him to have to answer the background questions. Tr. 128, 212. Sometime prior to May 2, 1992, Hughes contacted his son, Daniel J. Hughes, and asked him whether he would be the qualifying person for the Beacon Builders license. Tr. 27 and 220; Partial Statement of Proceedings (P.S.P.) at 2. Frank Hughes explained to Dan Hughes that there were several questions on the application that Frank Hughes did not want to answer affirmatively. Frank Hughes led Daniel Hughes to believe that being a qualifying person did not require any work or effort. Tr. 28, 221-25. Daniel Hughes, without thinking about it for a great while, agreed to be the qualifying person on the application.

19. Frank Hughes filled out the application form, listing the Beacon Builders office as Daniel Hughes' home office and the Beacon Builders telephone number as Daniel Hughes home telephone number. This information was false. Tr. 28, Stipulation, paragraphs 19-21; Ex. 10 and Tr. 238.

20. On May 2, 1992, Daniel Hughes signed the application, indicating he was both a corporate officer and qualifying person. He also signed a surety bond as the president of Beacon Builders on May 7, and acknowledged before a notary on May 8 that he was the president of Beacon Builders. Although Daniel J. Hughes testified that he was never an officer of the company, never agreed to be an officer, and had no recollection of anyone ever discussing his being an officer, the Administrative Law Judge does not believe his testimony to be credible. The Administrative Law Judge finds that Daniel Hughes knew that he was signing these documents as president of Beacon

Builders, Inc., and that he knew it was a part of the "sham" created by his father to cover up his father's involvement in Beacon Builders.

21. Frank Hughes prepared corporate minutes, dated May 7, 1992, indicating that he desired to remove himself as president of Respondent and that Daniel J. Hughes desired to become president, and that Daniel J. Hughes was elected as president. Tr. 124-25; Ex. 32. Regardless of this formality, however, Daniel Hughes had no involvement as either a corporate officer or qualifying person of Beacon Builders, other than signing the application form, surety bond, and receiving \$100 per month from May of 1992 through October of 1993 for serving in these capacities. Tr. 32-35.

22. At the time of submitting the application to the Department on May 11, 1992, Gary Rohweder and Barry Rohweder were both vice-presidents of the company, Frank Hughes was its treasurer, and Bernadette J. Hughes was a director, secretary and vice-president. Despite holding these offices, none of them were disclosed on the application or in the attachments thereto. None of the background information required for any officer or director was given for any of these persons. Instead, all of the questions requiring background information from any officer or director were answered "no". For each of those individuals, had the application form been answered correctly, there would have been at least one "yes". **[The accuracy of this finding is challenged as reflected in the appended April 6, 2005 letter].**

23. On May 11, 1992, Frank Hughes hand-carried the application to the Department. Tr. 134, 593. On May 13, he telephoned the Department to inquire about the status of the license, and spoke with Paul Jansen, an investigator in the enforcement division. Although Jansen had just started working for the Department at the end of February 1992, he was one of the persons who fielded calls from potential applicants who had questions about the application process. Tr. 414 and 437. Hughes told Jansen that he was in a rush to get his license. Jansen checked the computer, and told Hughes it had not yet been issued. The next morning, May 14, Jansen discovered that item 4 on the front page of the instructions of the application, had not been fully complied with. That item requires that applicants provide a list identifying the name and address of each corporate officer, director and all shareholders holding more than five percent of the stock of the corporation. There was no such list attached to the application as originally filed. Jansen called Hughes at 8:37 a.m. on May 14. Hughes was not in the office yet, but Hughes' secretary took a message indicating that Hughes should call Jansen. The message went on to state the following:

Item 4 front page appl.  
family trust



names, addresses, if officer or director.  
Call ques. about it ASAP.

Ex. 100. Later on that morning, at 9:51, Jansen called again, and left word for Hughes to call Jansen, indicating that he would be in and out of his office, but Hughes should try calling him anyway. Ex. 101. Finally, at 10:40 a.m., Jansen called again. Again, Hughes was unavailable. Jansen left a message as follows: "It's important to you to call." Ex. 106.

24. At some point on May 14, Hughes and Jansen did talk, and Jansen indicated that there had to be some written statement submitted regarding the Hughes family trust. In response, Frank Hughes hand-wrote out a short letter dated May 14, addressed to the Department, to the attention of Mr. Paul Jansen, as follows:

Regarding the application for a building contractor's license by Beacon Builders, Inc., I hereby declare that the Hughes Family Trust owns all the stock in the corporation, that no corporate officer, director or shareholder, other than the trust, owns any stock in the corporation.

Sincerely,

Beacon Builders, Inc.  
By Frank Hughes

This letter, which is the last page of Exhibit 10, was hand-delivered by Frank Hughes to the Department's front desk. Later that day, the license was issued, and Jansen called Hughes to report its issuance. Ex. 61.

25. The testimony and exhibits describing the interaction of Frank Hughes and Paul Jansen are grossly divergent. The above Findings reflect the Administrative Law Judge's best estimate of what actually happened. See, Memorandum.

26. On June 5, 1992, Frank Hughes prepared corporate minutes indicating that Daniel J. Hughes desired to remove himself as president and that Frank Hughes wished to become president and that Frank Hughes was elected as president. Tr. 125, 234-35; Ex. 33. Daniel Hughes was never told of this change. However, as noted above, he was performing no duties in connection with his status as president of the corporation, so it is not inconsistent that he would not know he had been removed. From June 5, 1992 to the present date, Frank Hughes has been the president of the corporation.

27. In an attempt to conceal his position as president, Frank Hughes signed a letter to the Department on May 19, 1993 as: "Beacon Builders, Inc., by: Frank Hughes". Tr. 338; Ex. 44. A similar letter on July 28, 1993 did not disclose Frank

Hughes' status with the corporation. Ex. 45. In an October 15, 1993 letter to the Commissioner, Hughes identified himself as the "commercial accounts manager". Ex. 46 and Tr. 340-42. In a telephone conversation shortly before October 15, Hughes informed the Department's counsel that he was the "commercial accounts manager". Tr. 341-42.

#### Post-Licensing Financial Matters

28. On September 3, 1992, a \$1,404 judgment was entered against Beacon Builders in Metro Home Insulation, Inc. v. Beacon Builders, Ramsey County Conciliation Court, Case No. S9-92-4842; Ramsey County District Court, File No. C293805. Stipulation, paragraph 25. The plaintiff in this matter was a subcontractor for Beacon Builders. Beacon Builders has not satisfied the judgment, and has made no payments on it. Tr. 144, 155 and S., 25.

29. On July 28, 1993, a \$830.51 judgment was entered against Beacon Builders in Wasteco, Inc. v. Beacon Builders, Inc., Ramsey County Conciliation Court, Case No. SX-33-3306; Ramsey County District Court, File No. C2-94-68. The plaintiff in this matter was a subcontractor for Beacon Builders. Beacon Builders has not satisfied the judgment, nor has it made any payments on it. Stipulation, at 26; Tr. 145 and 155.

30. On October 26, 1993, a \$630 judgment was entered against Beacon Builders in Donnelly Electric, Inc. v. Beacon Builders, Inc., Ramsey County Conciliation Court, Case No. S0931117; Ramsey County District Court, File No. C7-93-13954. The plaintiff was a subcontractor for Beacon Builders, Inc. Beacon Builders has not satisfied the judgment, nor have any payments been made. Stipulation, at 27; Tr. 149 and 155.

31. In connection with the latter case, Hughes completed a financial disclosure form on behalf of Beacon Builders, Inc. This form was signed by him (as president) on May 6, 1994. In the form, Hughes failed to disclose the existence of a checking account despite the fact that Beacon Builders did have one. Tr. 685 and Ex. 115. Although Hughes did answer "yes" to the question which asked whether the corporation had any accounts receivables or claims, he only disclosed one such item, which related to the location where Donnelly Electric also worked, and did not disclose other accounts receivable or judgments. Ex. 108, Tr. 607.

32. On January 14, 1994, a \$2,582.60 judgment was entered against Beacon Builders in Labor Finders v. Beacon Builders, Inc., Ramsey County Conciliation Court, Case No. S3-93-5513; Ramsey County District

Court, File No. C3-94-2265. Labor Finders has served as a subcontractor for Beacon Builders. Beacon Builders has not satisfied the judgment nor made any payments on it. Stipulation, paragraph 28 and Tr. 152-55.

33. Since the Department issued the residential building contractor's license to Respondent, Respondent's president, Frank R. Hughes, had a \$1,450.29 judgment entered against him in Larkin, Hoffman, Daly & Lindgren, Ltd. v. Francis R. Hughes, Ramsey County District Court, File No. C3-93-4944, on September 11, 1993. Frank R. Hughes has not satisfied the judgment in this matter, and he has not made any payments on it. S. 6-7 and Tr. 144.

34. On March 9, 1994, a \$6,969.35 judgment was entered against Beacon Builders in Disposal Systems, Inc. v. Beacon Builders, Inc., Ramsey County District Court, File No. C3-93-13188. This matter originated in conciliation court where a judgment was entered against Respondent. Respondent has not satisfied the judgment in this matter, nor made any payments on it. Stipulation, paragraph 30; Tr. 154-55; Ex. 96.

35. Beacon Builders, Inc. owes delinquent state and federal taxes of approximately \$1,000 to \$2,000, plus penalties and interest. These are withholding taxes for the fourth quarter of 1992 and the first quarter of 1993. Tr. 158-62; 190.

36. The State of Minnesota (apparently through the Department of Revenue) has assessed a tax against Frank Hughes, individually, based upon his withdrawal of corporate funds for personal uses, which he has characterized as "loans" to himself. This tax has not been paid, and Hughes does not intend to pay it unless he "absolutely has to". Tr. 77-80.

#### Minneapolis Licensing

37. During 1991, Beacon Builders had a Minneapolis class A building contractor license. This license expired on December 1, 1991. Stipulation, at 54 and 56; see also, Ex. 17.

38. In February of 1992, Minneapolis city license inspector Julie Casey received a complaint from Lyle and Barbara Franke. The Franks were homeowners with whom Beacon Builders had an existing fire damage repair contract. Upon review of the records, Casey determined that Beacon Builders' license had expired and that no renewal application had been submitted. She then contacted Frank Hughes by telephone and informed him both of the complaint and of the fact that Beacon Builders was not currently licensed. Tr. 465-68 and 488.

39. On March 25, 1992, Hughes hand-delivered a 1992 license application to the City, and also met with Casey. At this time, Casey informed Hughes that the City would not renew Beacon Builders' license until the Franke complaint was resolved. Casey put a notice on Beacon Builders' computer file to prohibit Beacon from obtaining additional building permits. Tr. 468-71, 486, and 517, 552.

40. On April 15, 1992, Beacon Builders entered into a contract with Matthew J. Delaney for repair of fire damage to a residence located at 3950 Washburn Avenue North. Gary Rohweder, in his capacity as vice-president of Beacon Builders, signed the contract for Beacon Builders. As of April 15, 1992, Frank Hughes had not made Rohweder aware of any problems with Beacon Builders' Minneapolis license. Stipulation, paragraph 67 and Tr. 262. **[The accuracy of this finding is challenged as reflected in the appended April 6, 2005 letter].**

41. During May and June, a series of contacts occurred between Frank Hughes and various personnel in the City's licensing unit. These included a hearing before a technical advisory committee on June 11, 1992. At the time of the hearing, Beacon Builders' license application was still pending, having neither been approved nor denied. This was made clear to Hughes when he was given a number of conditions that Beacon Builders, Inc. would have to meet prior to the Department recommending approval of the license. Hughes asked whether the license could be granted without conditions if he disassociated himself from the company, or stepped down as chief operating officer, and his son assumed the office. Tr. 358, 486-87, 551-52, 558 and 578.

42. On July 1, 1992, Casey wrote Hughes a letter advising him that the agency would be seeking a license denial hearing before the appropriate city council committee. Tr. 489-490; Ex. 15.

43. On July 6, 1992, Beacon Builders entered into a contract with Carole Jones for repair of fire damage to a residence at 427 Russell Avenue North in Minneapolis. Gary Rohweder signed the contract for Beacon Builders. It is unclear whether Rohweder had become aware that Respondent was not licensed by this July 6 date. Tr. 257-60, 265 and 491-92. **[The accuracy of this finding is challenged as reflected in the appended April 6, 2005 letter].**

44. Beacon Builders' 1992 Minneapolis license was never granted. Tr. 496; Ex. 16.

45. In an attempt to obtain building permits without meeting the conditions imposed by the City licensing officials, Frank Hughes conceived the idea of licensing a different corporation to do work in the City of Minneapolis. Back in

1988, Hughes and his sister, Eileen Hentges, had founded a corporation known as the Eileen Corporation. Hentges had had little involvement in the corporation, and Hughes was president of the corporation during the summer of 1992. The Eileen Corporation was inactive at that time, and had never been licensed as a building contractor prior to the summer of 1992. Stipulation, paragraphs 73-75 and Tr. 370, 634, 699-703. Hughes asked James Stearns, a Beacon Builders, Inc. employee, if he would become vice-president of the Eileen Corporation so that the corporation could become licensed and building permits could be issued. Tr. 301-05 and 373. Stearns agreed. Hughes filled out most of a Minneapolis license application for the Eileen Corporation, and procured liability insurance and a bond. Stearns filled out the other portions, signed the application and, in accordance with Hughes' instructions, submitted it to the City. Ex. 25, Stipulation at 77 and 78, and Tr. 306.

46. The application asks whether any of the officers/partners are associated with or have any interest in other firms which engaged in a building contractor's business. The form is marked "no". The blanks for disclosure of such other businesses are left blank. This is a false representation, as Frank Hughes was the president of the applicant, the Eileen Corporation. Tr. 304-05, 372-76. Hughes did not personally have any communication with the City about the Eileen Corporation's application, because he wanted to "keep my name out of it". Tr. 373. The City granted a license to the Eileen Corporation on September 3, 1992. Ex. 25.

47. Using the license of the Eileen Corporation, Stearns obtained building permits for the Delaney and Jones contracts mentioned above. The Jones permit was issued on August 24, 1992 and the Delaney permit was issued on September 18, 1992. Ex. 50 and 49, respectively, and Tr. 309-11. Delaney and Jones were never informed that Beacon Builders had obtained permits to do work on their homes through the Eileen corporation. They believed they were dealing with Beacon Builders, Inc. Tr. 312-13, 393-94 and 376-78. The Eileen Corporation did not enter into any subcontracts for anyone for work on the Delaney and Jones projects in its own name. Instead, Beacon Builders, Inc. continued its work on the projects as if it were licensed and obtained the permits itself. Stearns was compensated by Beacon Builders, Inc., not by the Eileen Corporation, for his work on the two projects. Tr. 312-15.

48. The City of Minneapolis required a \$2,000 deposit from the Eileen Corporation to ensure completion of the work on the Delaney project. Frank Hughes provided Stearns \$2,000 in currency, which was either Hughes' or Beacon Builders' money. Stearns made the deposit with the City. Stipulation at paragraphs 67, 79-80; Tr. 378, 641. After Beacon Builders/Eileen was terminated by Delaney, Hughes had several communications with Minneapolis officials in an attempt to

obtain a refund of the \$2,000 deposit. Hughes concealed his identity from Minneapolis officials during these communications, using the alias "Gene Jackson", because he did not want to put the City on alert as to his or Beacon Builders' involvement in the situation. When he submitted a Notice of Claim to the City to procure a refund, he did not sign it, for the same reason. Stipulation, paragraph 82; Ex. 26; Tr. 379-80.

#### General Liability Insurance

49. At the time of Beacon Builders' application for state licensure, it held a public liability policy issued by Great American Insurance Company, Policy No. GLP 2-72-56-38-1. This policy was cancelled by Great American on August 25, 1992. Beacon had no public liability insurance between August 25, 1992 and February 11, 1994, at which time it obtained a binder for insurance with a different insurance company. During the period August 25, 1992 through the end of January 1993, Beacon actively engaged in the construction business while it was uninsured. Stipulation, paragraphs 87-90 and Tr. 654-55.

Based upon the foregoing Findings, the Administrative Law Judge makes the following:

#### CONCLUSIONS

1. The Administrative Law Judge and the Minnesota Commissioner of Commerce have jurisdiction in this matter pursuant to Minn. Stat. § 326.91, 14.50, and 45.027 (1992, as amended in 1993). The Notice of Hearing and Amendment thereto was, in all respects, proper and the Department has complied with all substantive and procedural requirements of law and rule.

2. Pursuant to Minn. Rules, pt. 1400.7300, subp. 5, the Department has the burden of proof to show, by a preponderance of the evidence, that Beacon Builders has committed the violations alleged.

3. Beacon Builders violated Minn. Stat. §§ 326.91, subds. 1(1), (2) and (5) (1992) by filing an application for licensure which contained materially false information and omitted material information about Respondent and Respondent's corporate officers and their backgrounds. The failure to disclose the names and addresses of the corporate officers and the director constitutes a material omission. The failure to disclose background information with regard to officers and the director other than Daniel J. Hughes constituted the submission of false statements or statements which were misleading with respect to material facts. These omissions also constituted a violation of Minn. Stat. § 326.89, subd. 2(4) and (6).

4. Beacon Builders engaged in fraudulent, deceptive and dishonest practices in violation of Minn. Stat. § 326.91, subd. 1(2) (1992) by using Daniel J. Hughes as the president and qualifying person for the corporation when, in fact, Daniel J. Hughes did not perform any of the functions associated with those positions.

5. Beacon Builders and its president, Frank R. Hughes, have been shown to be financially irresponsible in violation of Minn. Stat. § 326.91, subd. 1(6) (1992 & Supp. 1993). This is due to their failure to satisfy judgments, their failure to pay subcontractors, the accrual of delinquent taxes, penalties and interest, and their failure to maintain public liability insurance.

6. Beacon Builders has violated Minn. Stat. § 326.91, subd. 1(5) (1992 & Supp. 1993) by failing to have a qualifying person who was a chief executive officer or a managing employee regularly employed by Respondent and actively engaged in the business of residential contracting on Respondent's behalf, as required by Minn. Stat. § 326.84, subd. 2(3) (1992) and Minn. Stat. § 326.84, subd. 1C (Supp. 1993).

7. Beacon Builders and Francis R. Hughes engaged in fraudulent, deceptive or dishonest practices, in violation of Minn. Stat. § 326.91, subd. 1(2), in connection with construction activities in Minneapolis in 1992 and its communications with Minneapolis licensing officials. Entering into contracts without a license, the use of the Eileen Corporation as a "cover" for Beacon, and the use of an alias all constitute separate violations of these provisions.

8. Beacon Builders, Inc. violated Minn. Stat. § 326.94, subd. 1(5) (1992 & Supp. 1993) by failing to have public liability insurance, as required by Minn. Stat. § 326.94, subd. 2 (1992 & Supp. 1993).

Based upon the foregoing, the Administrative Law Judge makes the following:

#### RECOMMENDATION

IT IS RESPECTFULLY RECOMMENDED that the Commissioner of Commerce take appropriate disciplinary action against Beacon Builders, Inc.

Dated this 24th day of October, 1994.

\_\_\_\_\_  
s/ Allan W. Klein

ALLAN W. KLEIN  
Administrative Law Judge

NOTICE

Pursuant to Minn. Stat. § 14.62, subd. 1, the agency is required to serve its final decision upon each party and the Administrative Law Judge by first class mail.

Reported: Tape recorded; Transcript prepared by Jeff Watzak, Reporters Diversified Services, Duluth.

MEMORANDUM

The only difficult issue in this entire, lengthy proceeding is determining what was said during the telephone conversations between Paul Jansen and Frank Hughes in April and May of 1992. Their testimony is directly contradictory and so are the exhibits which each offered to support their version of what happened. The Administrative Law Judge has set forth in the Findings what he believes to have happened, but he readily admits that there can be no certainty with regard to the events which transpired.

In attempting to piece together what happened at that time, it must be remembered that licensure for building contractors was relatively new, and that the Department was scrambling to put the program in place. The licensure requirement took effect on January 1, 1992. Faced with the prospect of processing between 5,500 and 6,000 new licenses during the first six months of 1992, the Department was busy answering questions and processing papers throughout that period of time. One of the persons to whom applicant questions was directed was Paul Jansen, who had just joined the Department at the end of February 1992. Prior to that time, he had been a licensed real estate agent, a professor at the University of St. Thomas, and an SBA administrator. He had not been previously involved in the drafting of the legislation or the departmental preparations for the commencement of the program, nor had he had any prior regulatory/enforcement experience. It is more likely than not that in April and early May, he had not developed a "regulator's mind set", and that he would be sympathetic to a telephone caller who portrayed himself as an experienced businessman who "just needed to get some paperwork out of the way". Based upon Jansen's demeanor during the hearing, the Administrative Law Judge believes Jansen would have tried to help such a caller "cut through red tape" and get his license issued so that the caller could get back to doing "real work".

Hughes claims that Jansen counseled Hughes to find a "clean" qualifying person for the application. Hughes also



claims that Jansen told Hughes that unless a person owned five percent of the stock of the corporation, none of the background questions would have to be answered, even for an officer or director. Hughes argues that the Department should be estopped from disciplining him for his reliance on Jansen's advice.

The Administrative Law Judge has not made findings on the difficult question of whether or not Jansen actually did opine on the five percent question, because it does not matter. A person seeking to invoke equitable estoppel against a government agency bears a "heavy burden of proof".

Ridgewood Development Co. v. State, 294 N.W.2d 288, 292-93 (Minn. 1980); Brown v. Minnesota Dept. of Public Welfare, 368 N.W.2d 906, 910 (Minn. 1985). In weighing whether to estop a governmental agency, the public interest that would be frustrated must be considered, along with the equities of the case. Brown, supra, at 910. Even if Hughes met his burden of proving that Jansen did make the statement, the public interest in consumer protection outweighs any unfairness to Hughes.

The basic question to be answered in this case is whether or not Beacon Builders should continue to be licensed. The public interest would not be served by continued licensure. Therefore, even if Jansen did tell Hughes that the disclosure and background questions only applied to persons who were at least five percent shareholders, the Department would not be estopped from taking action against Beacon's license based upon the false and misleading application. This is especially the case in light of the many other grounds for discipline which were proven by the Department.

AWK

Barry Rohweder  
Gary Rohweder  
1401 Texas Avenue South  
Saint Louis Park, Minnesota 55426

April 6, 2005

Raymond R. Krause  
Chief Administrative Law Judge  
Office of Administrative Hearings  
100 Washington Square, Suite 1700  
Minneapolis, Minnesota 55401-2138

Re: incorrect information in OAH File No. 6-1005-8450-2, Beacon Builders, Inc., and Francis R. Hughes  
Judge Krause,

In the above mentioned report, we are challenging data according to Minnesota Statutes, section 13.04, subdivision 4. In the Findings Of Fact section of that report, item #'s 5, 10, 11, 22, 40, 43 are incorrect. We will respond to each by number:

5) At no time were Gary Rohweder or Barry Rohweder officers or owners in any way with Beacon Builders or Hughes' interests. Gary Rohweder and Barry Rohweder were employees of Beacon Builders, Inc. (the corporation) for a short period of time (approximately 10 months)

10) The fact that Gary Rohweder may have had judgements against him is not relevant since Gary Rohweder was not an officer of the corporation and therefore not under the scrutiny of the Commerce Department for a license application

11) This statement is incorrect and not relevant since Barry Rohweder was not an officer of the corporation and therefore was not under the scrutiny of the Commerce Department for a license application

22) Neither Gary Rohweder nor Barry Rohweder were officers of the corporation and therefore were not under the scrutiny of the Commerce Department for a license application

40) This is incorrect since Gary Rohweder was not an officer of the corporation

43) Gary Rohweder was informed by Frank Hughes that Beacon Builders, Inc. did in fact hold a Building Contractors License.

We respectfully request that this incorrect data be removed from your files. We feel that the data being challenged is not relevant to the outcome of this case and therefore it can easily be removed.

Please use the mailing address at the top of this letter to respond to this matter.

Sincerely,



Barry Rohweder



Gary Rohweder

RECEIVED  
2005 APR -7 AM 8:08  
ADMINISTRATIVE  
HEARINGS